



MEETING OF APRIL 17, 2007

AGENDA ITEM NO. 6A

Application I.D.: PA2006-0093

Application Type: Conditional Use Permit

Location: 1015 Alameda de las Pulgas

Owner: Ivano Pelligrino

Applicant: Tony Ciardella for Hola's Mexican Restaurant

APN: 045-040-110

Zoning: C-1 Neighborhood Commercial

General Plan Designation: Ch, Highway Commercial

Environmental Determination: Categorically Exempt, Section 15301

PROJECT DESCRIPTION:

The applicant requests approval of a Conditional Use Permit to allow a Cabaret use, consisting of live mariachi players, at the existing Hola Mexican Restaurant, located at 1015 Alameda de las Pulgas in the Carlmont Village Shopping Center.

RECOMMENDATION

Staff recommends that the Planning Commission **approve** the Conditional Use Permit subject to the findings and conditions of approval contained in the attached draft resolution¹.

GENERAL PLAN/ZONING CODE DESIGNATION

The Belmont General Plan designates the project site as Cn - Neighborhood Commercial. The subject site is zoned C-1, which is also Neighborhood Commercial. The subject restaurant is located within the Carlmont Village Shopping Center. Restaurants are a permitted use in the C-1 Neighborhood Commercial Zoning District.

¹ Please note: This recommendation is made in advance of completion of all public testimony or Commission discussion of the project. At the public hearing, these two factors, in conjunction with the staff analysis, will be considered by the Commission in rendering a decision on the project.

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300/500-Foot Radius Map

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BACKGROUND

Hola Mexican Restaurant has been hosting live mariachi music for several months without the benefit of the required Conditional Use Permit. Upon notification that a Conditional Use Permit is required for any live entertainment use in the C-1 zoning district, the applicant subsequently submitted the subject application.

SITE CONDITIONS

Hola Mexican Restaurant is located within the Carlmont Village Shopping Center which is situated on the southeast corner of the intersection of Ralston Avenue and Alameda de las Pulgas. The neighborhood shopping center hosts a variety of retail and service oriented commercial uses, as well as several restaurants and a large grocery market. The various commercial uses are clustered in “row” buildings that front onto the shared parking areas.

There are other commercial and retail uses located directly across Ralston Avenue from the subject property. An assisted living facility is located across Alameda de las Pulgas. There are single family residential properties located to the east of the subject shopping center. The back side of the “row” building in which the subject restaurant use is located is adjacent to the property line shared with single family residences.

PROJECT ANALYSIS

The existing Hola Mexican Restaurant operates dine-in service seven days a week from 11:00 AM to 11:00 PM as permitted by the Belmont Zoning Ordinance. The applicant is not requesting any modification to the hours of operation. They are requesting a Conditional Use permit to allow live music performances by a mariachi band, with a maximum of 10 performers. They are requesting that the live music performance be permitted during all business hours, but have indicated that live music is generally scheduled for Saturday evenings between 7:00 PM and 11:00 PM. The musicians will be permitted to stroll throughout the entire restaurant. No dancing for restaurant patrons will be permitted at the time as dancing would change the building occupancy as defined by the California Building Code.

PROJECT DATA

Criteria	Existing	Proposed	Required/ Max. Allowed
Lot Size	7.87 acres	No Change	N/A
Slope	<1%	No Change	N/A
FAR	.164	No Change	0.8
Square Footage	56,332 sq. ft.	No Change	N/A
Parking	446 spaces	No Change	323 spaces

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NEIGHBORHOOD OUTREACH STRATEGY

The applicant reports performing neighborhood outreach as detailed in attachment IV. On December 11, 2006 a letter was mailed to all property owners within 300 feet of the subject property informing them of the requested Conditional Use Permit to legalize live musical performances and inviting them to attend an informational meeting at the restaurant on December 28, 2006. The applicant received one written response, which is included with attachment IV. The respondent lives in the residential neighborhood located to the east of the building which houses the restaurant. The neighbor indicated that he is not opposed to the live music, but did have noise concerns with the restaurant, including the live mariachi band use which reportedly can be heard from his home.

The neighbor suggested in his letter that the restaurant keep all windows and doors at the rear of the building closed during live musical performances as a possible noise attenuation measure. The applicant has agreed to this condition and staff has included a condition of approval to that effect.

No other responses to the public notice have been received by staff as of the writing of this report. The applicant appears to have achieved the goals of the outreach strategy tasks.

ENVIRONMENTAL CLEARANCE (CEQA)

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act as it qualifies under Section 15301:

“Minor alteration of existing public or private structures...involving negligible or no expansion of an existing use.”

The proposal to allow live mariachi music does not modify the existing restaurant use of the property and is exempt from CEQA.

ZONING/GENERAL PLAN CONFORMANCE

The site is designated as Cn - Neighborhood Commercial in the General Plan and is zoned C-1 Neighborhood Commercial on the Zoning Map. The restaurant use is appropriate for the neighborhood shopping center in which it is located. The restaurant operates from 11:00 AM to 11:00 PM which is consistent with Zoning Ordinance regulations. The request to allow live mariachi music does not change the existing restaurant use.

Section 5.2.2(t) of the Zoning Ordinance requires a Conditional Use Permit for any Cabaret Use. Section 2.33.1 of the Zoning Ordinance defines a Cabaret use as “a restaurant, tavern, or lounge which provides live musical entertainment on the premises.” Approval of the subject Conditional Use Permit would bring the property into compliance with the list of conditionally permitted uses for the C-1 Neighborhood commercial Zoning District.

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No changes to the floor plan or building exterior are proposed and thus design review approval is not required at this time.

Parking

Parking for the Carlmont Village Shopping Center is presently calculated as follows:

Retail uses – One parking space for every 250 square feet

35,252 square feet = 141 spaces

Restaurants – One parking space for every 60 square feet of customer space

4,597 square feet = 77 spaces

– One parking space for every 600 sq. ft. of kitchen and storage area

2,298 square feet = 4 spaces

Office, Business, and Professional uses – One parking space for every 250 square feet

14,185 square feet = 57 spaces

Gas Station – Two spaces for each working bay, plus one space for each employee

10 parking spaces

The above calculations indicate that 289 parking spaces are required to serve all of the various commercial uses located within the Carlmont Village Shopping Center. There are currently 446 parking spaces. The requested Conditional Use Permit to allow live mariachi music will not modify parking requirements for the restaurant. The request is compliant with the Zoning Ordinance parking requirements.

Noise

The General Plan states in Section 3013 that:

“As a local government, the City of Belmont has limited control over the sources of noise affecting the community. It’s primary role is to ensure that land uses and occupancies are compatible with the noise environment and that building regulations provide for adequate insulation or other measures to maintain acceptable levels of interior noise and that changes in land use or occupancy do not unreasonably increase existing noise exposure.”

Section 15-102 of the Noise Ordinance (July 2006), establishes maximum noise levels for non-residential properties. The maximum permitted during nighttime hours is 55 dBA, and the maximum noise level permitted during daytime hours is 65 dBA. The restaurant will be required to operate in compliance with the recently adopted noise ordinance.

Staff recommends that, should the Commission choose to support this proposal, a condition of approval be added to review this Use Permit in one year to assure that the noise instances from the live musical performances remain reasonable for the surrounding uses in the vicinity.

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CONDITIONAL USE PERMIT ANALYSIS

In order to grant a Conditional Use Permit, the Planning Commission must make the following findings pursuant to Section 11.5.1 (a-d) of the City of Belmont Zoning:

- a) The location of the proposed use is compatible to other land uses in the general neighborhood area and does not place an undue burden on existing transportation, utilities and service facilities in the vicinity.*

The applicant is requesting a Conditional Use Permit to allow live musical entertainment during normal business hours. The musical entertainment is complementary to the existing restaurant use. The addition of live musical entertainment would not place an undue burden on parking, traffic circulation, or utilities serving the neighborhood shopping center.

Single Family Residential properties abut the Carlmont Shopping Center along the easterly property line. The back side of Hola Mexican Restaurant opens to these residential properties. To address any potential noise conflicts, the applicant has agreed to keep all doors and windows at the rear of the building closed during musical performances. This finding can be made in the affirmative.

- b) The site is of sufficient size to accommodate the proposed use together with all yards, open spaces, walls and fences, parking and loading facilities, landscaping and such other provisions required by this ordinance.*

The existing floor plan complies with all applicable Building and Zoning Ordinance requirements and no physical changes to the building interior or exterior are proposed at this time. No dancing for restaurant patrons shall be permitted as dancing would change the building occupancy as defined by the California Building Code. There is presently excess parking provided for the entire shopping center. Site landscaping will not be altered to accommodate the requested live musical performances. This finding can be made in the affirmative.

- c) The site will be served by streets of a capacity sufficient to carry the traffic generated by the proposed use.*

Carlmont Village Shopping Center is located on the southeast corner of Ralston Avenue and Alameda de las Pulgas. Both roads are of sufficient capacity to serve this neighborhood shopping center. The request to allow live mariachi performers during normal business hours would not modify existing traffic or circulation patterns in the area. The request for live entertainment would also not significantly increase the intensity of the existing restaurant use. This finding can be made in the affirmative.

- d) The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the City.*

All City departments have reviewed the proposal and provided conditions of approval that should ensure that live musical entertainment at Hola Mexican Restaurant will not adversely

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affect the general welfare of the City. A condition of approval has been included requiring that the restaurant comply with the Belmont Noise Ordinance. A condition of approval has also been included requiring that this Conditional Use permit be reviewed by the Planning Commission in one year to assure that the associated noise from the live musical performances remain reasonable for neighboring uses in the vicinity.

With incorporation of and adherence to the above stated conditions of approval, staff believes that this finding can be made in the affirmative.

CONCLUSION

The proposed Conditional Use Permit to allow live musical entertainment at Hola Mexican restaurant generally meets the objectives of the General Plan and Zoning Ordinance. Based on the foregoing analysis of the required findings, staff recommends **approval** of the Conditional Use Permit application subject to the conditions of approval in attachment III.

ACTION ALTERNATIVES

1. Continue the matter to a date certain to allow subsequent review of an alternative proposal.
2. Deny the Conditional Use Permit application.

ATTACHMENTS

- I. 500 foot radius map of project site (Page 2 of report)
- II. Resolution approving the Conditional Use Permit
- III. Conditions of Approval
- IV. Neighborhood Outreach Materials
- V. Project plans and submittal materials (Commission only)

Respectfully submitted,

Jennifer Walker
Associate Planner

Carlos de Melo
Community Development Director

PLEASE NOTE: Attachments IV and V are not included as part of this document. Please contact the Community Development Department for more information on viewing these attachments.

RESOLUTION NO. 2007-_____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BELMONT
APPROVING A CONDITIONAL USE PERMIT TO ALLOW A CABARET USE
CONSISTING OF LIVE MARIACHI MUSIC (APPL.NO. PA2006-0093)

WHEREAS, Hola Mexican Restaurant requests a Conditional Use Permit to allow live musical entertainment, consisting of mariachi players, within an existing dine-in restaurant located at 1015 Alameda de las Pulgas; and,

WHEREAS, a public hearing was duly noticed, held, and closed on April 17, 2007; and,

WHEREAS, the Planning Commission of the City of Belmont finds the project to be categorically exempt pursuant to the California Environmental Quality Act, Section 15301; and,

WHEREAS, the Planning Commission hereby adopts the staff report dated April 17, 2007, and the facts contained therein as its own findings of facts; and,

WHEREAS, the Planning Commission has considered the applicant's request for a Conditional Use Permit to allow live musical entertainment at Hola Mexican Restaurant and finds that it meets required findings as set forth in Section 11.5.1 of the Zoning Ordinance as follows:

- a) *The location of the proposed use is compatible to other land uses in the general neighborhood area and does not place an undue burden on existing transportation, utilities and service facilities in the vicinity.*

The applicant is requesting a Conditional Use Permit to allow live musical entertainment during normal business hours. The musical entertainment is complementary to the existing restaurant use. The addition of live musical entertainment would not place an undue burden on parking, traffic circulation, or utilities serving the neighborhood shopping center.

Single Family Residential properties abut the Carlmont Shopping Center along the easterly property line. The back side of Hola Mexican Restaurant opens to these residential properties. To address any potential noise conflicts, the applicant has agreed to keep all doors and windows at the rear of the building closed during musical performances. This finding is affirmed.

- b) *The site is of sufficient size to accommodate the proposed use together with all yards, open spaces, walls and fences, parking and loading facilities, landscaping and such other provisions required by this ordinance.*

The existing floor plan complies with all applicable Building and Zoning Ordinance requirements and no physical changes to the building interior or exterior are proposed at this time. No dancing for restaurant patrons shall be permitted as dancing would change the building occupancy as defined by the California Building Code. There is presently excess parking provided for the entire shopping center. Site landscaping will not be altered to accommodate the requested live musical performances. This finding is affirmed.

- c) *The site will be served by streets of a capacity sufficient to carry the traffic generated by the proposed use.*

Carlmont Village Shopping Center is located on the southeast corner of Ralston Avenue and Alameda de las Pulgas. Both roads are of sufficient capacity to serve this neighborhood shopping center. The request to allow live mariachi performers during normal business hours would not modify existing traffic or circulation patterns in the area. The request for live entertainment would also not significantly increase the intensity of the existing restaurant use. This finding is affirmed.

- d) *The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the City.*

All City departments have reviewed the proposal and provided conditions of approval that should ensure that live musical entertainment at Hola Mexican Restaurant will not adversely affect the general welfare of the City. A condition of approval has been included requiring that the restaurant comply with the Belmont Noise Ordinance. A condition of approval has also been included requiring that this Conditional Use permit be reviewed by the Planning Commission in one year to assure that the associated noise from the live musical performances remain reasonable for neighboring uses in the vicinity.

With incorporation of and adherence to the above stated conditions of approval, the Planning Commission believes that this finding is affirmed.

WHEREAS, the Planning Commission finds the applicant's request for a Conditional Use Permit is consistent with the required findings pursuant to 11.5.1 of the Belmont Zoning Ordinance (BZO). The Planning Commission reviewed the proposed use and believes the proposal (as conditioned) conforms to all required standards and is generally compatible with neighboring properties.

WHEREAS, the Planning Commission did hear and use their independent judgment and considered all said reports, recommendations and testimony herein above set forth.

NOW, THEREFORE, BE IT RESOLVED the Planning Commission approves the Conditional Use Permit to allow live musical entertainment, consisting of mariachi players, within an existing dine-in restaurant located at 1015 Alameda de las Pulgas, subject to the conditions attached as Exhibit "A".

* * * * *

Passed and adopted at a regular meeting of the Planning Commission of the City of Belmont held on April 17, 2007 by the following vote:

AYES,
COMMISSIONERS: _____
NOES,
COMMISSIONERS: _____
ABSENT,
COMMISSIONERS: _____
ABSTAIN,
COMMISSIONERS: _____
RECUSED,
COMMISSIONERS: _____

Carlos de Melo
Planning Commission Secretary

EXHIBIT "A"

CONDITIONS OF PROJECT APPROVAL
CONDITIONAL USE PERMIT
1015 ALAMEDA DE LAS PULGAS (APPL. NO. 2006-0093)

I. COMPLY WITH THE FOLLOWING CONDITIONS OF THE COMMUNITY DEVELOPMENT DEPARTMENT:

- A. The following conditions shall be shown on plans submitted for a building permit and/or site development permit or otherwise met prior to issuance of the first building permit (i.e., foundation permit) and shall be completed and/or installed prior to occupancy and remain in place at all times that the use occupies the premises except as otherwise specified in the conditions:

Planning Division

1. All construction and related activities which require a City building permit shall be allowed only during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, and 10:00 a.m. to 5:00 p.m. on Saturdays. No construction activity or related activities shall be allowed outside of the aforementioned hours or on Sundays and the following holidays: New Year's Day, President's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day. All gasoline powered construction equipment shall be equipped with an operating muffler or baffling system as originally provided by the manufacturer, and no modification to these systems is permitted.
2. In accordance with the Belmont Zoning Ordinance, the permit(s) granted by this approval shall expire one (1) year from the date of approval, with said approval date indicated on the accompanying Planning Commission resolution. Any request for extension of the expiration date shall be made in accordance with the applicable provisions of the Belmont Zoning Ordinance.
3. Within 30 days of this approval, the property owner shall file with the Director of Community Development, on forms provided by the City, an acknowledgment that he/she has read, understands and agrees to these conditions of approval.
4. In the event that this approval is challenged by a third party, the property owner and all assignees will be responsible for defending against this challenge, and agrees to accept responsibility for defense at the request of the City. The property owner and all assignees agree to defend, indemnify and hold harmless the City of Belmont and all officials, staff, consultants and agents from any costs, claims or liabilities arising from the approval, including without limitation, any award of attorneys fees that might result from the third party challenge.
5. All signage shall be provided in accordance with Section 23 of the Belmont Zoning Ordinance.

6. No dancing shall be permitted on the premises by restaurant patrons.
7. The restaurant and the live musical entertainment shall operate in compliance with the standards established in the Belmont Noise Ordinance (Maximum 65 dBA for daytime hours, Maximum 55 dBA for nighttime hours).
8. Live musical entertainment shall be permitted between the hours of 11:00 AM and 11:00 PM, seven days per week. Any change to these performance hours shall be considered a change to the Conditional use Permit and will require Planning Commission review.
9. All building openings at the rear of the building, including windows and doors, shall remain closed during live musical entertainment so as to minimize noise levels for the neighboring uses
10. This Conditional Use Permit shall be reviewed by the Planning Commission after one years time to assure that the noise emissions from the live musical entertainment remain reasonable for the neighboring uses.
11. This Conditional Use Permit shall be deemed null and void upon a finding by the Planning Commission that the property for which such exception has been granted is in violation of any applicable provisions of this Ordinance, or that there has been failure to comply with any condition or conditions imposed in the granting of a Conditional Use Permit, as per Section 11.9 of the Belmont Zoning Ordinance.
12. Hours of operation and phone numbers shall be posted outside the building for complaints.

II. COMPLY WITH THE FOLLOWING CONDITIONS OF THE POLICE DEPARTMENT:

1. All activities shall be subject to the requirements of the Belmont Noise Ordinance.

Certification of Approved Final Conditions:

Jennifer Walker, Associate Planner

Date